

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRUCE THORNS,

Plaintiff,

vs.

S. RYAN, *et al.*,

Defendant.

CASE NO. 07-CV-00218-H (AJB)

**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND GRANTING IN PART AND
DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS**

On April 15, 2008, Plaintiff Bruce Thorns, a state prisoner proceeding *pro se* and *in forma pauperis*, filed a first amended complaint ("FAC") pursuant to 42 U.S.C. § 1983 against twenty-three named defendants.¹ (Doc. No. 61.) On May 15, 2008, Defendants filed a motion to dismiss the FAC for failure to exhaust administrative remedies and for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 62.) Plaintiff filed a response in opposition on June 12, 2008. (Doc. No. 65.) Defendants filed a reply on June 19, 2008. (Doc. No. 66.) On July 31, 2008, the Magistrate Judge entered a Report and Recommendation that the Court grant in part and deny in part Defendants' motion to dismiss the FAC. (Doc. No. 67.) The Court set deadlines of October 2, 2008 for Plaintiff to file any objections to the Report and Recommendation and October 16, 2008 for Defendants to file any

¹Plaintiff named twenty-five defendants in the FAC; however two of the named defendants, Leapheart and Ruan, are now deceased and have not been served. (See Doc. Nos. 6, 8.)

1 reply. (Doc. No. 68.) Plaintiff submitted his objections on October 2, 2008 and the
2 Defendants did not file a reply. (Doc. No. 70.)

3 Plaintiff has exhausted his administrative remedies and agrees with the Magistrate
4 Judge's recommendations in his response to the Report and Recommendation. (See Doc. No.
5 70.) The Defendants have similarly not lodged any objections to the Report and
6 Recommendation. Accordingly, the Court adopts the Report and Recommendation, grants the
7 motion in part with leave to amend and denies the motion in part.

8 **Conclusion**

9 For the reasons set forth above, the Court ADOPTS the findings contained in the
10 Report and Recommendation (Doc. No. 67) and ORDERS as follows on the Defendants'
11 motion to dismiss (Doc. No. 62):

12 1. The Court DENIES Defendants' motion to dismiss Plaintiff's claim of
13 excessive force against Defendants O'Connell and Casillas.

14 2. The Court GRANTS WITH LEAVE TO AMEND Defendants' motion to
15 dismiss Plaintiff's claim of retaliation in violation of his First Amendment rights against
16 Defendants Rivas, Limas, Elizondo, Ritter, Crittendon, Brown, Davis, Trujillo, Jimenez,
17 Janda, Ryan, Ochoa, Ries, Kelly, Whitman, Kellerman, Borem, Harmon, Nelson, Ramirez,
18 and Williams.

19 3. The Court GRANTS WITH LEAVE TO AMEND Defendant's motion to
20 dismiss Plaintiff's claim of due process violations under the Fourteenth Amendment against
21 Defendants Limas, Elizondo, Ramirez, and Jimenez.

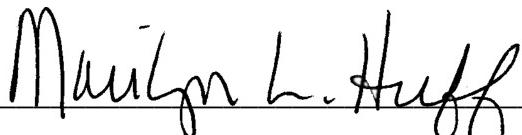
22 4. The Court sua sponte DISMISSES WITH LEAVE TO AMEND Plaintiff's
23 claim of conspiracy against Defendants Ryan, Ochoa, Ries, Kelly, Whitman, Kellerman,
24 Ritter, Crittendon, Borem, Harmon, Nelson, Ramirez, Williams, Rivas, Limas, Elizondo,
25 Brown, Davis, Trujillo, Janda, and Jimenez.

26 5. The Court sua sponte DISMISSES WITH LEAVE TO AMEND Plaintiff's
27 claim of deprivation of personal property in violation of his Fourteenth Amendment due
28 process rights against Defendant Borem.

1 Plaintiff shall have 30 days from the date of this order to file a second amended
2 complaint.

3 **IT IS SO ORDERED.**

4 DATED: January 23, 2009


5 MARILYN L. HUFF, District Judge
6 UNITED STATES DISTRICT COURT

7 COPIES TO:
8 All parties of record.

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